

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JEAN PAUL LOTZ, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

ONNIT LABS, INC.,

Defendant.

Case No.: 7:24-cv-03098-KMK

AMENDED COMPLAINT

Plaintiff Jean Paul Lotz, on behalf of himself and all others similarly situated (“Plaintiff”), by and through his undersigned counsel, Denlea & Carton LLP and Kravit Smith LLP, states for his Amended Complaint against Onnit Labs, Inc. (“Onnit”), as follows:

PRELIMINARY STATEMENT



1. This action seeks to redress the false, misleading and deceptive advertising and marketing claims that have made Onnit one of the world's largest manufacturers of a purported "memory supplement" or "brain health supplement" called "Alpha BRAIN®," namely, the claims that Alpha BRAIN® supports memory, focus and processing speed for which Alpha BRAIN® allegedly has clinical support. As set forth in more detail below, those claims (which are the centerpiece of Alpha BRAIN®'s ubiquitous marketing campaigns) are blatantly false and deceptive because even its own flawed clinical study revealed that Alpha BRAIN® does not improve memory, focus and mental processing speed.

2. The global market for brain-health supplements was expected to reach \$5.8 billion in 2023. A survey conducted by the AARP showed that 26% of Americans aged 50 and older regularly take supplements, believing they will maintain or enhance their brain health. They are falling prey to false and deceptive claims and wasting their money. The Global Council on Brain Health ("GCBH") is a prestigious independent collaborative of scientists, health professionals, scholars, and policy experts from around the world who work in the areas of brain health related to human cognition. The GCBH has concluded:

There is no convincing evidence to recommend dietary supplements for brain health in healthy older adults.... For most people, the best way to get your nutrients for brain health is from a healthy diet. Unless your health care provider has identified that you have a specific nutrient deficiency, there is not sufficient data to justify taking any dietary supplement for brain health. The GCBH does not endorse any ingredient, product or supplement formulation specifically sold for brain health. Because no government agency determines dietary supplements are safe or effective before they are sold, consumers should approach supplements claiming to improve or boost brain function with skepticism. Because dietary supplements can be sold without a government agency first determining that they are safe or and effective before they are sold, consumers should also be aware that in addition to being a waste of money, some supplements could physically harm them. ***Despite claims to the contrary, brain health supplements have not been established to maintain thinking skills or improve brain function.*** However,

there are many other lifestyle habits such as getting enough sleep, exercising regularly, eating a healthy diet, staying mentally active and being socially engaged that are recommended by the council.¹ (Emphasis added.)

3. But this action has not been commenced to establish that brain-health supplements, including Alpha BRAIN®, do not work at all. Instead, by this action, Plaintiff seeks to redress Onnit’s false and deceptive marketing campaign built upon the misleading claim that Alpha BRAIN® has clinical proof that it improves memory generally and improves focus and mental processing speed when its own study contradicts those claims.

THE PARTIES

4. Plaintiff Jean Paul Lotz is a 50 year-old individual who resides in Orange County, New York. During the relevant time period, Plaintiff was a resident of Manhattan, New York.

5. Defendant Onnit is a Delaware corporation headquartered in Austin, Texas.

6. Upon information and belief, Onnit manufactures, markets and sells Alpha BRAIN®. Alpha BRAIN® is sold through its website and other retailers such as Amazon.com, Walmart, CVS, The Vitamin Shoppe, and Target. Onnit was co-founded by prominent American commentator and podcaster, Joe Rogan. Rogan launched *The Joe Rogan Experience* in 2009 and by 2015 it was one of the most popular podcasts in the world, regularly receiving millions of plays per episode. Spotify obtained exclusive distribution rights to *The Joe Rogan Experience* in 2020 for US\$200 million. Rogan's audience grew significantly and in 2024, Rogan renewed his deal with Spotify for an estimated \$250 million. Rogan regularly promotes Alpha BRAIN® on his podcast and Plaintiff often listened to Rogan’s podcast and Plaintiff relied on Rogan’s representations that Alpha BRAIN® could “boost” cognitive performance.

¹ Global Council on Brain Health (2019). *The Real Deal on Brain Health Supplements: GCBH Recommendations on Vitamins, Minerals, and Other Dietary Supplements*. Available at www.GlobalCouncilOnBrainHealth.org. DOI: <https://doi.org/10.26419/pia.00094.001>.

7. Onnit was sold to consumer brand giant Unilever in 2021 for an estimated \$250-\$400 million.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (1) the amount in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs, and (2) the named Plaintiff and Defendant are citizens of different states. 28 U.S.C. § 1332(d)(2)(A). Based on publicly available sources, Plaintiff estimates that Onnit had annual revenues of \$100,000,000.00 and estimates that it had revenues of over \$18 million in New York during the three-year period preceding this action. Statutory damages under GBL §§ 349 and 350 are \$50 or \$500 *per purchase* plus attorneys' fees. Plaintiff estimates that there are thousands of potential class members in New York.

9. The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as the parties are diverse and the amount in controversy exceeds the requisite threshold.

10. This Court may exercise jurisdiction over Onnit because Onnit has sufficient minimum contacts in New York and purposely avails itself of the markets within New York through the promotion, sale, marketing, and distribution of its products, thus rendering jurisdiction by this Court proper and necessary.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred within this judicial district and because Defendant has marketed and sold the products at issue in this action within this judicial district and has done business within this judicial district.

CHOICE OF LAW

12. New York law governs the state law claims asserted herein by Plaintiff and the New York class he seeks to represent.

13. New York has a substantial interest in protecting the rights and interests of New York consumers against wrongdoing by companies that market and distribute their products within the State of New York.

FACTUAL BACKGROUND

I. THE BRAIN-HEALTH SUPPLEMENT MARKET

14. There is a significant market for brain-health supplements, as 26% of Americans over the age of 50 are reported to have used them. To differentiate one's product in this crowded marketplace, it is not uncommon to increase one's marketing budget, or otherwise falsely to overstate the efficacy of one's product. Alpha BRAIN®, Onnit's flagship product, has been on the market since 2010 and Onnit claims it has sold more than 3 million bottles.

15. Alpha BRAIN® has faced two major competitors for the brain-health hucksterism crown: (a) Prevagen, sold by Quincy Bioscience and (b) "Neuriva," sold by Reckitt Benckiser LLC. Both of those purveyors of purported memory supplements have been sued in class actions and forced to pay large amounts to defrauded consumers and throttle back their baseless claims.

16. Prevagen claimed to "improve memory within 90 days," "support healthy brain function," and similar claims. Prevagen's purported active ingredient is a protein called apoaquorin, apparently derived from a species of jellyfish called *Aequorea victoria* — in other words, the modern version of snake oil. Needless to say, the maker of Prevagen was sued in a number of separate class actions and compelled to pay dearly for its exorbitant claims. Quincy Bioscience agreed to a settlement of over \$40 million in which defrauded consumers received 30% of their purchase price up to \$70, and Prevagen had to eliminate its misleading claims. The

Federal Trade Commission and New York Attorney General have also commenced an action against Quincy Bioscience. On March 11, 2024, a jury in the Southern District of New York returned a verdict against Quincy Bioscience in all material respects.

17. Neuriva claimed that it has “clinically proven natural ingredients” that “fuels 5 indicators of brain performance” including “Focus, Memory, Learning, Accuracy, and Concentration.” In reality, none of the Neuriva Products had ever been clinically studied. The makers of Neuriva, Reckitt Benckiser LLC and RB Health (US) LLC, were sued in a putative class action that was recently settled for approximately \$8 million and injunctive relief, providing consumers with proof of purchase \$32.50 per purchase up to \$65 and without proof of purchase \$5 per purchase up to \$20.

18. There are numerous other makers of so-called brain-health supplements that make unfounded claims of efficacy and the competition among them is fierce. When the marketplace for these brain snake oils is rife with outrageous claims, the only way for the snake oil purveyors to distinguish themselves is to lead the pack in mendacity.

II. ONNIT’S FALSE CLAIMS CONCERNING ALPHA BRAIN®

19. Onnit’s marketing of Alpha BRAIN® centers around its claims that it supports cognitive functions, including memory, mental speed and focus and that there is a clinical study that supports its claims. That single 2016 clinical study² was funded by Onnit itself and does not support Alpha BRAIN®’s claims and is hereafter referred to as the “Onnit Funded Study.” A copy of the Solomon Study is attached as Exhibit A hereto.

20. That study summarizes the ingredients in Alpha BRAIN® as follows:

² Solomon, T. M., Leech, J., deBros, G. B., Murphy, C. A., Budson, A. E., Vassey, E. A., & Solomon, P. R. (2016). *A randomized, double-blind, placebo controlled, parallel group, efficacy study of Alpha BRAIN® administered orally*. Human Psychopharmacology, **31**(2), 135–143. PMID: 26876224. <https://doi.org/10.1002/hup.2520>

Alpha BRAIN® (Onnit Labs LLC) is a multiingredient nutritional supplement that purports to enhance cognitive function in healthy adults. The commercially available product contains 12 naturally occurring compounds (Figure 1) including L-tyrosine; huperzine A, bacopa, phosphatidylserine and L-Alpha BRAIN® glycerylphosphorylcholine; vinpocetine and pterostilbene. Each compound present in the Alpha BRAIN® formula has evidence to support safe consumption and provide possible cognitive benefit (Barbagallo Sangiorgi et al., 1994; Sun et al., 1999; Sheng et al., 2001; Valikovics, 2007; Berry et al., 2011; Downey et al., 2013; Unno et al., 2013; Hirayama et al., 2014; Song et al., 2015; Steenbergen et al., 2015; Yang et al., 2015). In addition, the manufacturer has suggested that their specific formulation of compounds may increase acetylcholinergic neurotransmission and provide neuroprotective benefit. However, prior studies have been specific to the individual compounds found in Alpha BRAIN® and have not focused on the compound or formulation as a whole.

21. The stated purpose of the Onnit Funded Study was as follows:

The purpose of the present study was to evaluate the efficacy of the nootropic Alpha BRAIN® on the manufacturers purported target population of healthy adults utilizing a randomized, double-blind, placebo controlled trial using standardized tests of learning, memory, attention, concentration, processing speed and executive functioning as well as measures of sleep.

22. The abstract of the study summarizes its results as follows:

Compared with placebo, Alpha BRAIN® significantly improved on tasks of delayed verbal recall and executive functioning. Results also indicated significant time-by-group interaction in delayed verbal recall for the Alpha BRAIN® group.

However, the Onnit Funded Study's full text describes a very slight improvement only in one aspect of memory and *no* improvement for the other "cognitive domains," *i.e.*, the other foci of the study including memory generally, learning, attention, concentration, processing speed and executive functioning³ as well as measures of sleep.

³ "Executive functioning" tests evaluate the cognitive abilities that enable the identification of goals, mental planning, behavior organization, and planning actions to achieve these goals. Faria CA, Alves HVD, Charchat-Fichman H., *The most frequently used tests for assessing executive functions in aging*. Dement Neuropsychol. 2015 Apr-Jun;9(2):149-155, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5619353/>. Alpha BRAIN® does not make any specific claim to increase executive functioning but it is worth noting that one board certified neurologist commenting on the study was particularly critical of the abstract's claim that the study improved "executive functioning" when the study itself reflected a decrease in the executive functioning test performance in both the Alpha Brain® and placebo group, albeit a smaller decrease in the Alpha BRAIN® group. So it was, in the words of that neurologist, "absurd to claim that Alpha improved executive function where people actually taking it did worse [than when they started the trial]." <https://www.youtube.com/watch?v=dRLGi6qfqpU>.

23. The Onnit Funded Study administered 26 cognitive tests to all the participants and reported the following results:

Table 2. Cognitive test score (mean and SD) from +15 and +45 time points

Outcome measure	+15		+45	
	AB n=30	Placebo n=33	AB n=30	Placebo n=33
Logical Memory I Total	M=27.27 SD=6.13	M=26.00 SD=6.54	M=29.57 SD=7.24	M=28.57 SD=3.20
Logical Memory II Total	M=23.67 SD=6.55	M=22.88 SD=6.21	M=28.57 SD=9.99	M=29.45 SD=6.87
BVMT Trial I	M=8.63 SD=2.78	M=8.55 SD=2.27	M=9.20 SD=3.03	M=10.24 SD=2.20
BVMT Trial II	M=10.90 SD=1.51	M=11.09 SD=1.28	M=10.93 SD=2.01	M=11.42 SD=1.75
BVMT Trial III	M=11.40 SD=1.07	M=11.33 SD=1.36	M=11.50 SD=1.13	M=11.70 SD=1.05
BVMT Total Trials I-III	M=31.10 SD=4.83	M=31.00 SD=4.21	M=31.37 SD=5.68	M=33.36 SD=4.68
BVMT Delay Trial	M=11.33 SD=1.12	M=11.30 SD=1.21	M=11.37 SD=1.21	M=11.58 SD=1.03
F Total	M=14.10 SD=4.11	M=14.03 SD=4.01	M=17.77 SD=5.63	M=17.48 SD=4.57
A Total	M=13.53 SD=3.90	M=12.91 SD=3.61	M=14.00 SD=4.88	M=14.82 SD=4.83
S Total	M=16.13 SD=3.73	M=16.27 SD=4.30	M=14.63 SD=4.18	M=14.55 SD=4.43
FAS Total	M=43.77 SD=5.30	M=42.15 SD=10.1	M=46.40 SD=12.9	M=46.82 SD=11.21
Animals Total	M=24.63 SD=5.30	M=24.55 SD=5.46	M=22.27 SD=5.93	M=22.58 SD=4.22
Symbol Span	M=30.23 SD=7.07	M=29.85 SD=9.14	M=31.97 SD=9.11	M=30.30 SD=6.88
Digit Symbol Coding	M=58.50 SD=12.55	M=59.64 SD=9.93	M=58.23 SD=8.55	M=64.12 SD=1.49
Trails A	M=22.87 SD=8.78	M=22.39 SD=5.69	M=20.70 SD=6.57	M=20.58 SD=6.80
Trails B	M=54.90 SD=17.5	M=62.55 SD=21.6	*M=43.33 SD=15.1	*M=51.21 SD=16.4
20 Questions Total Score	M=25.40 SD=5.21	M=25.82 SD=5.37	M=26.30 SD=4.42	M=25.00 SD=5.33
20 Questions Ach. Score	M=16.60 SD=3.43	M=16.33 SD=2.45	M=15.73 SD=2.16	M=16.03 SD=2.50
Stroop Inhibition Trial	M=44.23 SD=9.00	M=44.64 SD=10.7	M=42.63 SD=7.97	M=40.55 SD=8.26
Stroop Switching Trial	M=54.17 SD=13.6	M=52.58 SD=9.61	M=51.17 SD=13.8	M=48.79 SD=12.97
CVLT Total Score	M=43.76 SD=9.97	M=43.21 SD=10.1	M=46.40 SD=12.9	M=46.84 SD=11.2
CVLT Short Delay	M=11.27 SD=2.37	M=11.39 SD=2.17	M=11.83 SD=2.94	M=12.39 SD=1.96
CVLT Long Delay	M=11.13 SD=2.60	M=11.09 SD=3.18	*M=12.77 SD=2.2	*M=11.33 SD=2.3
PSAT Trial I	M=38.33 SD=13.18	M=39.15 SD=11.8	M=43.30 SD=13.0	M=43.33 SD=10.3
PSAT Trial II	M=28.83 SD=10.78	M=28.64 SD=9.04	M=30.03 SD=13.1	M=32.12 SD=9.23
Epworth Scale	M=10.50 SD=16.97	M=28.64 SD=9.04	M=7.23 SD=4.37	M=7.72 SD=2.99

*<0.05

M: mean

SD: standard deviation

BVMT: Brief Visual Memory Test

CVLT: California Verbal Learning Test

PSAT: Paced Serial Addition Test

The only test where the Alpha BRAIN® group outperformed the placebo group was a version of a California Verbal Learning Test (“CVLT”) Long Delay test in which participants were asked to learn a 16-item shopping list and subsequently recall the information after 20 minutes.⁴

However, no overall increase in memory can be claimed because the placebo group actually outperformed the Alpha BRAIN® group in the CVLT Total Score⁵ and the CVLT Short Delay test. So Alpha BRAIN® cannot claim that it improves memory generally when its own study did not find that Alpha BRAIN® improved memory generally without qualification.

⁴ https://en.wikipedia.org/wiki/California_Verbal_Learning_Test

⁵ The “CVLT Total Score” is the composite score for multiple CVLT tests, including total learning, short delay free recall, long delay free recall, and recognition measures.

24. In the other 25 out of 26 tests, there was not a statistically significant difference between the Alpha BRAIN® group and the placebo group and, in many cases, the placebo group actually outperformed the Alpha BRAIN® group. Significantly, of those tests that were designed to measure attention, concentration and processing speed, there was no statistically significant difference between the Alpha BRAIN® group and the placebo group, which renders Alpha BRAIN®'s claim to help focus and mental speed demonstrably false and its claim to generally improve memory misleading. Again, the Onnit Funded Study clearly admits that fact by stating that “[n]o other group effects [other than the CVLT Long Delay test] reached statistical significance.” Indeed, the only scientifically valid conclusion that can be drawn from the results of the Onnit Funded Study is that Alpha BRAIN® inhibits cognitive function in a number of different respects when compared with a placebo.

25. In summary, Alpha BRAIN®'s claims that it improves focus, mental speed and memory generally are false as demonstrated by its own Onnit Funded Study.

III. STUDIES OF ALPHA BRAIN®'S CONSTITUENT INGREDIENTS DO NOT SUPPORT ALPHA BRAIN®'S FALSE EFFICACY CLAIMS

26. It is indisputable that the Onnit Funded Study is the only study that exists that examines the efficacy of Alpha BRAIN® as a whole. Indeed, the Onnit Funded Study itself states: “prior studies have been specific to the individual compounds in Alpha BRAIN® and have not focused on the compound or formulation as a whole.” As such, it is self-evident that the Onnit Funded Study's results are dispositive as to whether Onnit's cognitive performance claims are supported by clinical proof.

27. The Onnit Funded Study cites eleven prior “studies” of Alpha BRAIN®'s individual components that it claims “provide evidence to support safe consumption [of each of those individual components] and provide *possible* cognitive benefit.” (Emphasis added.)

28. The following review of each of those eleven studies demonstrates that they do not support Alpha BRAIN®’s false cognitive benefit claims, even if one were to ignore the Onnit Funded Study’s negative results.

29. **Barbagallo Sangiori et al 1994.**⁶ This study examined the efficacy of L-Alpha Glycerylphosphorylcholine (“Alpha GPC”), an ingredient in Alpha BRAIN®, and administered Alpha GPC to patients recovering from strokes or other transient ischemic attacks (*i.e.*, known as “mini-strokes” which is a medical emergency that occurs when blood flow to the brain is temporarily blocked). The dosage in the study was 1000 mg/day for 28 days, followed by 400 mg/day for five months. The study concluded that Alpha GPC helped stroke and mini stroke patients recover cognitively. The Barbagello 1994 study provides no support for the efficacy of Alpha BRAIN® for two reasons. First, the recommended daily dosage of Alpha BRAIN® has only 200 mg of Alpha GPC, whereas the Barbagello 1994 study administered *five times* that amount of Alpha GPC for the first month and *twice* that amount for five months. There is no clinical support for a claim that Alpha GPC is effective in a dose that is much smaller than the dose studied. Second, and more importantly, Alpha BRAIN® is not marketed to stroke victims to help them recover cognitively, it is marketed to the general public as being able to *promote* and *boost* their memory, mental processing speed, and focus. Notably, the Barbagello 1994 study merely found a recovery in 71% of the patients to a “normal” cognitive state and did not study or find that Alpha GPC increased cognitive performance in patients compared to their pre-stroke cognitive performance.

⁶ Barbagallo Sangiorgi G, Barbagallo M, Giordano M, et al. 1994. alpha-Glycerophosphocholine in the mental recovery of cerebral ischemic attacks. An Italian multicenter clinical trial. Ann N Y Acad Sci 717: 253–269. Available at <https://pubmed.ncbi.nlm.nih.gov/8030842/>

30. **Sun 1999**⁷. This preliminary study examined the efficacy of Huperzine-A (“Hup”) in adolescent students complaining of memory inadequacy. The study preliminarily concluded that Hup slightly enhanced the memory and learning performance of the studied adolescents. However, the study emphasized that it was only a preliminary finding: “So, we think that Hup is also a promising candidate drug for improving the memory function and learning aptitude in adolescent students. Owing to the insufficient observation period and lack of biochemical experiments, the results of this study are preliminary, the next strict designed study will be undertaken for identifying the efficacy of the Hup in the adolescents.” Thus, the Sun 1999 study does not support the efficacy of Alpha BRAIN® for two reasons: First, the study was quick to highlight that its findings of a slight memory increase in adolescents was preliminary and a further strictly designed study was necessary to actually identify the efficacy of Hup. Second, Alpha BRAIN® is strictly marketed to adults and Alpha BRAIN®’s label limits its use to adults, not adolescents whose brains are demonstrably different from an adult brain.

31. **Sheng 2001**⁸. This study examined whether extracts of *Uncaria tomentosa* (a woody vine known as “cat’s claw”) can help repair DNA following chemotherapy in cancer patients. Sheng 2001 did not study cognitive function generally or memory, mental processing speed or focus specifically. It thus provides no support whatsoever for those claims by Onnit for Alpha BRAIN®.

⁷ Sun QQ, Xu SS, Pan JL, et al. 1999. *Huperzine-A capsules enhance memory and learning performance in 34 pairs of matched adolescent students*. *Acta Pharmacologica Sinica* 20(7): 601–603. Available at <https://pubmed.ncbi.nlm.nih.gov/10678121/>

⁸ Sheng Y, Li L, Holmgren K, Pero RW. 2001. *DNA repair enhancement of aqueous extracts of Uncaria tomentosa in a human volunteer study*. *Phytomedicine* 8(4): 275–282. DOI:10.1078/0944-7113-00045. Available at <http://www.chinaphar.com/article/view/7802/8893>

32. **Valikovics 2007**⁹. This pilot study examined whether vinpositine (an ingredient in Alpha BRAIN®) could improve chronic hypoperfusion (a blood flow problem) in stroke or cognitively impaired patients:

The authors investigated the characteristics of the blood flow parameters of patients with ischemic stroke and mild cognitive impairment both in resting conditions or following chemical stimulus as well as they investigated the severity of mental deterioration in the two patient groups. In a pilot study the authors examined the influence of 12-week long oral vinpocetine therapy on the blood flow parameters and cognitive functions in the two patient groups....Vinpocetine improved the cerebrovascular reserve capacity in both patient groups and favourably influenced the cognitive status and general condition of patients with chronic hypoperfusion. The authors recommend the use of vinpocetine for the treatment of patients with mild cognitive impairment.

Obviously, this study examined patients with a specific adverse medical condition — chronic hypoperfusion — not the general public to whom Alpha BRAIN® is marketed. Valikovic 2007 says nothing about whether vinpositine can improve memory, mental processing speed or focus in any person without chronic hypoperfusion. Moreover, Valikovic 2007 was a “pilot” study that cannot trump a true clinical study like the Onnit Funded Study and thus cannot be counted as support for even its narrow focus, *i.e.*, improvement of chronic hypoperfusion. As the NIH has cautioned:

We routinely see specific aims for feasibility pilot studies that propose to evaluate “preliminary efficacy” of intervention A for condition X. However, there are two primary reasons why pilot studies cannot be used for this purpose. First, at the time a pilot study is conducted, there is a limited state of knowledge about the best methods to implement the intervention in the patient population under study. Therefore, conclusions about whether the intervention “works” are premature because you don’t yet know whether you implemented it correctly. Second, due to the smaller sample sizes used in pilot studies, they are not powered to answer questions about efficacy. Thus, any estimated effect size is uninterpretable—you do not know whether the “preliminary test” has returned a true result, a false

⁹ Valikovics A. 2007. *Investigation of the effect of vinpocetine on cerebral blood flow and cognitive functions*. Ideggyogy Sz 60(7–8):301–310. Available at <https://pubmed.ncbi.nlm.nih.gov/17713111/>

positive result, or a false negative result.¹⁰

As such, the Valikovics 2007 pilot study's preliminary conclusion that vinpositine may help patients with chronic hypoperfusion is neither relevant to Alpha BRAIN®'s claims nor is it reliable support for the narrow subject of its focus.

33. **Berry 2011**¹¹. This study examined the efficacy of *avena sativa* ("oat straw") in cognitive function in elderly volunteers who had below average cognitive function. The study was designed and funded by the maker of Neuraveno®, one of Alpha BRAIN®'s earlier competitors. Not surprisingly, this biased study found improvement in the elderly volunteers. Berry 2011 does not support, however, Alpha BRAIN® for two reasons: First, Alpha BRAIN® is marketed to the general public and is not focused on elderly consumers with cognitive decline. Second, and more importantly, the study used 1600 mg/day and 2400 mg/day of the oat straw, while Alpha BRAIN® has only 200 mg/day. Thus, Alpha BRAIN® cannot rely on a study that had much higher amounts of the active ingredient.

34. **Downey 2013**¹². This study examined the efficacy of *Bacopa monnieri*, an ingredient in Alpha BRAIN®, and was funded by the makers of KeenMind®, one of Alpha BRAIN®'s competitors. The results of the study were small cognitive improvements for the *Bacopa monnieri* study group but it does not directly support Alpha BRAIN®'s claims. First,

¹⁰ <https://www.nccih.nih.gov/grants/pilot-studies-common-uses-and-misuses>

¹¹ Berry N, Robinson M, Bryan J, Buckley J, Murphy K, Howe P. 2011. *Acute effects of an Avena sativa herb extract on responses to the Stroop Color-Word Test*. J Alternative Compl Med 17(7): 635–637. Available at https://core.ac.uk/reader/77027543?utm_source=linkout

¹² Downey LA, Kean J, Nemeh F, et al. 2013. *An acute, double-blind, placebo-controlled crossover study of 320 mg and 640 mg doses of a special extract of Bacopa monnieri (CDRI 08) on sustained cognitive performance*. Phytother Res: PTR 27(9): 1407–1413. DOI:10.1002/ptr.4864. Available at <https://pubmed.ncbi.nlm.nih.gov/23281132/>

the dosage for this study was 320 and 640 mg/day, whereas the dosage in Alpha BRAIN® is just 200 mg/day which is a material difference. Second, the study suffered from a small sample size which reduces the power of evidence for the result.¹³ The Downey 2013 study is simply too different and weak to support Alpha BRAIN®'s claims in light of the Onnit Funded Study that actually tested Alpha BRAIN®, not one of its many components, and which directly undercut Alpha BRAIN®'s claims.

35. **Unno 2013**¹⁴. This study focused on the efficacy of theanine for reducing stress in pharmacy students, not cognitive performance, so it provides no support whatsoever for Alpha BRAIN®'s cognitive performance claims.

36. **Hirayama 2014**¹⁵ This study focused on the effects of phosphatidylserine ("PS"), also an ingredient in Alpha BRAIN®, on ADHD in children. It has no application to Alpha BRAIN® which can only be used by adults and is not marketed to children with ADHD. It is well-documented that a child's brain and an adult's brain are materially different, and the results of cognitive tests on children have no direct bearing on cognitive tests in adults. The

¹³ Valotto Neto LJ, Reverete de Araujo M, Moretti Junior RC, Mendes Machado N, Joshi RK, Dos Santos Buglio D, Barbalho Lamas C, Direito R, Fornari Laurindo L, Tanaka M, Barbalho SM. *Investigating the Neuroprotective and Cognitive-Enhancing Effects of Bacopa monnieri: A Systematic Review Focused on Inflammation, Oxidative Stress, Mitochondrial Dysfunction, and Apoptosis*. Antioxidants (Basel). 2024 Mar 25;13(4):393. doi: 10.3390/antiox13040393. PMID: 38671841; PMCID: PMC11047749 ("The results were promising regarding the use of BM in early information processing, verbal learning, and memory strengthening compared to the use of a placebo. However, the sample size of this study was also small, reducing the power of evidence for the results.") Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11047749/>

¹⁴ Unno K, Tanida N, Ishii N, et al. 2013. *Anti-stress effect of theanine on students during pharmacy practice: positive correlation among salivary α -amylase activity, trait anxiety and subjective stress*. Pharmacol Biochem Behav 111: 128–135. DOI:10.1016/j.pbb.2013.09.004. Available at <https://pubmed.ncbi.nlm.nih.gov/24051231/>

¹⁵ Hirayama S, Terasawa K, Rabeler R, et al. 2014. *The effect of phosphatidylserine administration on memory and symptoms of attention-deficit hyperactivity disorder: a randomised, double-blind, placebo-controlled clinical trial*. J Hum Nutr Diet 27(Suppl 2): 284–291. DOI:10.1111/jhn.12090. Available at <https://pubmed.ncbi.nlm.nih.gov/24051231/>

Onnit Funded Study points to no other clinical studies of PS in adults, so there is no support for any claim that PS alone, or in combination with all the other ingredients in Alpha BRAIN®, improves cognitive function in adults.

37. **Song 2015**¹⁶ This is not a clinical study but simply a summary of the medical literature regarding pterostilbene (“PTS”), another ingredient in Alpha BRAIN®. Regarding cognitive function, Song 2015 notes that “[e]vidence from experimental studies indicates that PTS confers protective benefits against Alzheimer’s disease (AD) and vascular dementia.” However, PTS was studied with 10 mg/kg/day dose, so an average person of 160 lbs would be administered 760 mg/day. Alpha BRAIN® *has just 0.75 mg/day of PTS*, so that one study using 10,000% more PTS than Alpha BRAIN® is irrelevant to the purported efficacy of Alpha BRAIN®. The explanation for Alpha BRAIN®’s miniscule amount of PTS is explained by the caveat highlighted in Song 2015: High doses of PTS, like those studied, inhibits the patient’s immune responses so Song concluded that dose-dependent studies are required to identify the appropriate PTS dose. Obviously, Alpha BRAIN® did not want to administer a dose that lowered its user’s immune responses, so it opted for including a miniscule amount of PTS just so it could claim PTS as one of its ingredients. Suffice it to say, the one study of high dose PTS in Alzheimer’s patients does not support Alpha BRAIN®’s claims.

¹⁶ Song Z, Han S, Pan X, et al. 2015. *Pterostilbene mediates neuroprotection against oxidative toxicity via oestrogen receptor α signalling pathways*. J Pharm Pharmacol . DOI:10.1111/jphp.12360. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9571692/>

38. **Steenbergen 2015**¹⁷ This study focused on the effect of tyrosine, another ingredient in Alpha BRAIN®, on a very narrow area of cognitive performance, *i.e.*, “proactive vs. reactive control during task switching performance.” While that study produced positive results, it does not support Alpha BRAIN®’s claims in the least. First, the Steenbergen 2015 study was extremely narrow and did not specifically measure memory, mental processing speed and focus as the Onnit Funded Study did and which concluded that Alpha BRAIN®’s claims were not supported. Second and more importantly, the Steenbergen 2015 study used 2000 mg/day of tyrosine while Alpha BRAIN® contains just 540 mg/day. That difference is all the more important since later studies note that the Steenbergen 2015 study used relatively *small* doses of tyrosine¹⁸, so there is no clinical support for the proposition that tyrosine is effective at the small doses in Alpha BRAIN®. Again, the decision by Onnit to limit Alpha BRAIN®’s tyrosine content to a small amount was likely based on other studies that show that tyrosine may be detrimental with increasing age: “[W]e observed that tyrosine’s effect on brain and cognition became detrimental with increasing age, questioning the cognitive enhancing potential of tyrosine in healthy aging.”¹⁹

¹⁷ Steenbergen L, Sellaro R, Hommel B, Colzato LS. 2015. *Tyrosine promotes cognitive flexibility: evidence from proactive vs. reactive control during task switching performance*. Neuropsychologia : 6950–55. DOI:10.1016/j.neuropsychologia.2015.01.022. Available at <https://www.sciencedirect.com/science/article/abs/pii/S0028393215000299?via%3Dihub>

¹⁸ Bloemendaal M, Froböse MI, Wegman J, Zandbelt BB, van de Rest O, Cools R, Aarts E. *Neuro-Cognitive Effects of Acute Tyrosine Administration on Reactive and Proactive Response Inhibition in Healthy Older Adults*. eNeuro. 2018 Apr 30;5(2):ENEURO.0035-17.2018. doi: 10.1523/ENEURO.0035-17.2018. PMID: 30094335; PMCID: PMC6084775. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6084775/#B77>.

¹⁹ *Id.*

39. **Yang 2015**²⁰ It is entirely unclear why the Onnit Funded Study cited the Yang 2015 study. That study focused on the efficacy of L-Leucine, an ingredient in Alpha BRAIN®, on cardiovascular disease in obese and diabetic subjects, not cognitive performance. Needless to say, the Yang 2015 study provides no support for Alpha BRAIN®’s cognitive performance claims.

40. To summarize, the Onnit Funded Study undercuts Alpha BRAIN®’s cognitive performance enhancing claims and the eleven studies it cites for the proposition that Alpha BRAIN®’s individual ingredients “provide possible cognitive benefit” utterly fail to support Alpha BRAIN®’s claims.

IV. PLAINTIFF PURCHASED AND USED ALPHA BRAIN®

41. Alpha BRAIN® costs approximately \$487 - \$649 per year, depending on bottle size and method of purchase.

42. At the time Plaintiff was deceived by Alpha BRAIN®’s false and misleading marketing, he was a resident of Manhattan.

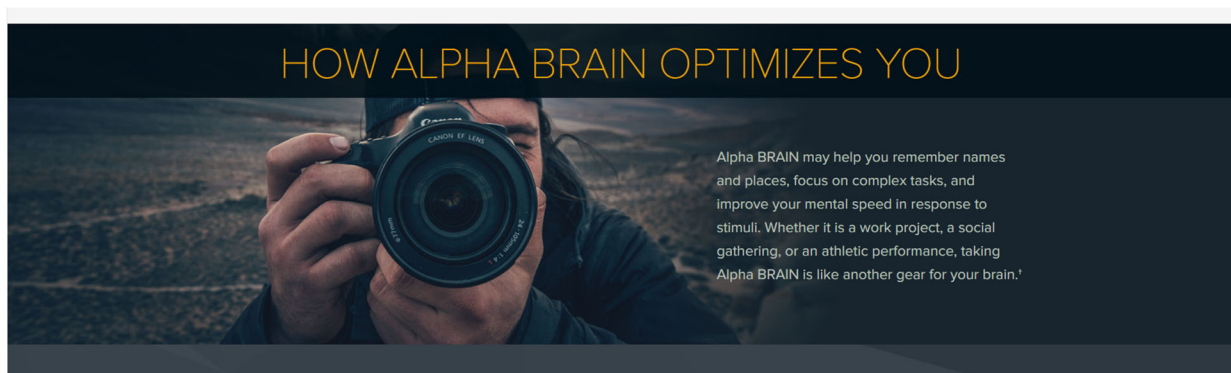
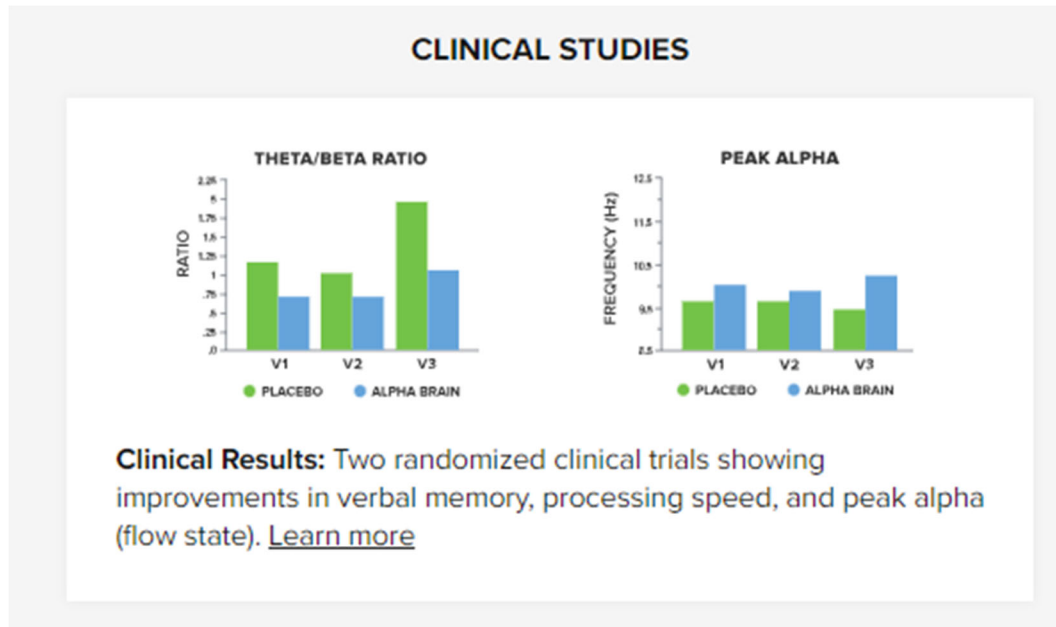
43. Plaintiff made five purchases of Alpha BRAIN® from Onnit’s website on February 5, 2020, April 26, 2021, May 10, 2021, June 24, 2021, and August 8, 2021.

44. Before purchasing Alpha BRAIN®, Plaintiff was exposed to several false marketing claims. First, Plaintiff regularly listened to Joe Rogan’s podcast, *The Joe Rogan Experience*, one of the most popular podcasts in the world. Rogan, a founder of Onnit, regularly promotes Alpha BRAIN® on his podcast and Plaintiff relied on Rogan’s representations that Alpha BRAIN® could “boost” cognitive performance.

²⁰ Yang Y, Wu Z, Meininger CJ, Wu G. 2015. *L-Leucine and NO-mediated cardiovascular function*. Amino Acids 47(3): 435–447. DOI:10.1007/s00726-014-1904-y. Available at <https://pubmed.ncbi.nlm.nih.gov/25552397/>

45. Second, Alpha BRAIN® is relatively expensive and Plaintiff spent time on Onnit's website reviewing Alpha BRAIN®'s purported benefits on cognitive function. During the period 2020-2021, Onnit made false and misleading claims that Alpha BRAIN® was clinically shown to improve memory, focus, and mental processing speed.

46. The following are examples of that false marketing:



Alpha BRAIN **vs** Placebo

How many opportunities to make a great point or make your friends laugh pass you by because that word gets stuck on the tip of your tongue? What could you accomplish if you could apply unwavering focus to any task you wanted? Two double blind clinical trials conducted by the Boston Center for Memory showed improvements vs placebo in memory, brainwave patterns, and focus.[†]



BENEFITS

ALPHA BRAIN® CAN HELP YOU...

Remember names and places[†]

Focus on complex tasks[†]

Think more clearly under stress[†]

React more quickly[†]

It seems to fire up your brain at a higher RPM level... I feel like it helps me form better sentences.

—— **JOE ROGAN**

Comedian, Podcast Host

Benefits


- Supports memory[†]
- Promotes focus[†]
- Aids mental processing[†]
- Helps with flow state (the feeling of being “in the zone”)[†]
- Caffeine free
- Gluten free

HOW ALPHA BRAIN[®] WORKS

If you want your brain to work better, you need to concentrate on two things: getting it to make more alpha waves and supporting the production of neurotransmitters[†], chemicals that relay information in and from the brain. We formulated Alpha BRAIN[®] with both goals in mind.

With its trademarked ingredient blends, Alpha BRAIN[®] helps build an environment in which the brain can operate on all cylinders, promoting lasting mental clarity.[†]

ONNIT FLOW BLEND™ AND CAT'S CLAW



L-THEANINE	WHAT IT IS	WHAT IT DOES
L-TYROSINE	An amino acid that stimulates the release of dopamine and serotonin in the brain—two hormones that induce relaxation via alpha wave activity. [†]	Shown to promote attention and reaction time. [†]
PHOSPHATIDYLSERINE		
OAT STRAW EXTRACT		

Target: Promote alpha brain wave production.[†]

Being in a flow state is associated with greater activity of alpha brain waves. Research actually shows that the brain is better organized and more calm and focused when alpha waves are firing high. The Onnit Flow Blend™ provides amino acids and other plant compounds that promote alpha brain wave production and optimal brain cell function.[†]

Claim that cat's claw promotes cognitive performance:

WHAT IT DOES

Shown to promote attention and reaction time.[†]

47. In addition to Onnit's website which Plaintiff reviewed and relied on, he was exposed to and relied on false representations made on third party websites such as Amazon that Alpha BRAIN® was clinically studied to boost memory, focus and processing speed," all of which Onnit authored:



Onnit Alpha Brain (90ct): Nootropic Brain Booster Supplement For Memory, Focus, and Mental Clarity | With Bacopa, AC11, Huperzine A, L-Tyrosine, and Vitamin B6

[Visit the ONNIT Store](#)

4.3 ★★★★★ 1,670 ratings | [Search this page](#)

700+ bought in past month

\$68³¹ (\$68.31 / Count)

Or \$12.61 /mo (6 mo). [Select from 1 plan](#)

prime Two-Day

Save \$35

[Unlock a \\$100 Amazon Gift Card](#) upon approval for Prime Visa and pay ~~\$68.31~~ \$0.00 for this order.

May be available at a lower price from [other sellers](#), potentially without free Prime shipping.

Brand	ONNIT
Flavor	Unflavored
Unit Count	1 Count
Item Form	Capsule
Item Weight	0.22 Pounds
Item dimensions L x	2.8 x 2.8 x 3.5 inches

[See more](#)

About this item

- **CLINICALLY STUDIED TO BOOST MEMORY, FOCUS, AND CLARITY.** Alpha Brain has been shown to support verbal memory, peak alpha brain waves (flow state), and processing speed after just one dose in a study done by the Boston Center for Memory.
- **RESEARCH SUGGESTS ALPHA BRAIN WORKS THE FIRST TIME YOU TAKE IT.** Alpha Brain is the nootropic of choice of world class performers in sports, entertainment, gaming, and more, including Joe Rogan, Tim Kennedy, Brian Cushing, Duane Ludwig, and Duncan Keith.
- **NON-HABIT FORMING, ONCE DAILY DOSE.** Alpha Brain is safe for daily use, without the risk of dependency associated with pharmaceuticals. Boost cognition, stay focused and alert longer, and retain info more easily with a daily serving of just two capsules.
- **CERTIFIED DRUG-FREE BY THE BANNED SUBSTANCES CONTROL GROUP.** Alpha Brain is safe for work and competition, and works by directly stimulating neurotransmitters, meaning you won't experience the crash or jitters associated with stimulant-based supplements.
- **NON-GMO | GLUTEN-FREE | CAFFEINE-FREE | VEGETARIAN CAPSULES.**

48. Plaintiff took Alpha BRAIN® but he did not experience improved memory,

focus, and mental processing speed.

49. Alpha BRAIN®'s prominent marketing claims that Alpha BRAIN® improves memory, focus, and mental processing speed was and is designed to mislead a reasonable consumer acting reasonably under the circumstances, like Plaintiff here, into believing that

Alpha BRAIN® had support for its claims to improve memory, focus, and mental processing speed.

50. Had Plaintiff known that Alpha BRAIN®’s own Onnit Funded Study established that that Alpha BRAIN® was *not* shown to improve memory generally, focus and mental processing speed then he would not have purchased the Alpha BRAIN® product. At the very least, Plaintiff would not have paid the exorbitant premium Alpha BRAIN® commands over cheaper nootropics that do not make false claims that they are clinically shown to boost memory, mental processing speed, and focus.

CLASS DEFINITION AND ALLEGATIONS

51. Plaintiff brings this action on behalf of himself and all other similarly situated consumers in the State of New York pursuant to Rule 23 of the Federal Rules of Civil Procedure, and seeks certification of the following class (the “Class”):

All consumers who, within the applicable statute of limitations period, purchased in the State of New York (whether online or in-person) Alpha BRAIN® which is manufactured, marketed, distributed and/or sold by Defendant (the “Class Product”). Excluded from the class are Defendant, its parents, subsidiaries, affiliates, officers and directors, judicial officers and their immediate family members and associated court staff assigned to this case, and those who purchased the Class Product for resale.

52. Plaintiff expressly disclaims any intent to seek any recovery in this action for personal injuries that he or any Class member may have suffered.

53. **Numerosity**. This action is appropriately suited for a class action. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed, believes, and thereon alleges, that the proposed Class contains thousands of purchasers of the Class Product who have been damaged by Onnit’s conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

54. **Existence and Predominance of Common Questions of Law and Fact.** This action involves questions of law and fact common to the Class. The common legal and factual questions include, but are not limited to, the following:

- Whether Defendant's conduct, as alleged herein, constitutes violations of New York General Business Law Section 349.
- Whether Defendant's conduct, as alleged herein, constitutes violations of New York General Business Law Section 350.
- Whether Defendant labeled, advertised, marketed, and/or sold the Class Product as improving memory, focus, concentration and mental processing speed.
- Whether Defendant's labeling, advertising, marketing, and/or selling of each Class Product as improving memory, focus, concentration and mental processing speed was and/or is false, fraudulent, deceptive, and/or misleading.

55. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class, because, *inter alia*, all Class members have been injured through the uniform misconduct described above and were subject to Alpha BRAIN®'s false and misleading claims to improve memory, focus, concentration and mental processing speed. Moreover, Plaintiff's claims are typical of the Class members' claims. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class.

56. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff purchased the Class Product, and he was harmed by Onnit's deceptive misrepresentations. Plaintiff has therefore suffered an injury in fact as a result of Onnit's conduct, as did all Class members who purchased a Class Product. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

57. **Superiority.** A class action is superior to other methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Onnit. It would be virtually impossible for a member of the Class, on an individual basis, to obtain effective redress for the wrongs done to him or her. Further, even if the Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no management difficulties under the circumstances here.

58. Plaintiff seeks monetary damages, including statutory damages on behalf of the entire Class. Unless a Class is certified, Onnit will be allowed to profit from its deceptive practices, while Plaintiff and the members of the Class will have suffered damages.

COUNT I
(Violation of New York General Business Law Section 349)

59. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 58 as if fully set forth herein.

60. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York].”

61. By labeling, advertising, marketing, distributing, and/or selling the Class Product to Plaintiff and the other Class members as able to improve memory, focus, concentration and

mental processing speed, Onnit engaged in, and continues to engage in, deceptive acts and practices because the Class Product does not improve memory (with the exception of long delay memory), focus, concentration and mental processing speed.

62. In taking these actions, Onnit failed to disclose material information about Alpha BRAIN®, including the fact that its own Onnit Funded Study showed no statistically significant improvement in memory (with the exception of long delay memory), focus, concentration and mental processing speed, which omissions were misleading in a material respect to consumers and resulted in the purchase of the Class Product.

63. Onnit has deceptively advertised, marketed, promoted, distributed, and sold the Class Product to consumers.

64. Onnit's conduct was consumer oriented.

65. Onnit engaged in the deceptive acts and/or practices while conducting business, trade, and/or commerce and/or furnishing a service in New York.

66. Onnit's false claims were and are misleading in a material respect as to whether the Class Product leads to improvement in memory (with the exception of long delay memory), focus, concentration and mental processing.

67. Based on, among other things, Onnit's knowing omission that the Class Product does not improve memory (with the exception of long delay memory), focus, concentration and mental processing, Plaintiff and other consumers were misled into purchasing the Class Product.

68. Plaintiff and the Class members have been aggrieved by and have suffered losses as a result of Onnit's violations of Section 349 of the New York General Business Law. By virtue of the foregoing unfair, unconscionable, and deceptive acts in the conduct of trade or

commerce, Plaintiff and the members of the Class have been substantially injured by purchasing the Class Product that is not what Onnit represents it to be.

69. By reason of the foregoing, Onnit's conduct, as alleged herein, constitutes deceptive acts and practices in violation of Section 349 of the New York General Business Law, and Onnit is liable to Plaintiff and the Class for the actual damages that they have suffered as a result of Onnit's actions, the amount of such damages to be determined at trial, plus statutory damages, treble damages, and attorneys' fees and costs.

70. Onnit's conduct, as alleged herein, in violation of Section 349 of the New York General Business Law was engaged in by Onnit willfully and/or knowingly. Accordingly, Plaintiff and members of the Class are entitled to an award of damages above and beyond their actual damages in accordance with Section 349(h) of the New York General Business Law.

COUNT II
(Violation of New York General Business Law Section 350)

71. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 70 as if fully set forth herein.

72. Onnit's marketing, and advertising of the Class Product is "misleading in a material respect," as it fails to disclose to consumers material information in Onnit's sole possession and, thus, is "false advertising."

73. No rational individual would purchase the Class Product at the premium prices at which they are sold if that individual knew that the Class Product does not improve memory (with the exception of long delay memory), focus, concentration and mental processing speed, which is how Onnit markets the Class Product.

74. Onnit's advertisements and marketing of the Class Product as alleged were consumer oriented.

75. Onnit's advertisements and marketing of the Class Product as alleged were misleading in a material respect.

76. By virtue of the foregoing unfair, unconscionable, and deceptive acts in the conduct of trade or commerce in New York, Plaintiff and the members of the Class have been substantially injured by purchasing a product that does not improve memory (with the exception of long delay memory), focus, concentration and mental.

77. Onnit's conduct, as alleged herein, constitutes false advertising in violation of Section 350 of the New York General Business Law, and Onnit is liable to Plaintiff and the members of the Class for the actual damages that they have suffered as a result of Onnit's actions, the amount of such damages to be determined at trial, statutory damages, plus treble damages, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Onnit as follows:

A. Certifying this action as a class action as soon as practicable, with the Class as defined above, designating Plaintiff as the named Class representative, and designating the undersigned as Class Counsel.

B. On Plaintiff's Count I, awarding against Onnit the damages that Plaintiff and the other members of the Class have suffered as a result of Onnit's actions, the amount of such damages to be determined at trial, plus statutory damages and treble damages.

C. On Plaintiff's Count II, awarding against Onnit the damages that Plaintiff and the other members of the Class have suffered as a result of Onnit's actions, the amount of such damages to be determined at trial, plus statutory and treble damages.

D. On Plaintiff's Count I and II, awarding Plaintiff and the Class interest, costs, and attorneys' fees.

E. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: July 12, 2024
White Plains, New York

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